

**RESOLUTION OF THE CITY
COUNCIL OF THE CITY OF
MINNEAPOLIS
Approving Acquisition of Right of
Way and Temporary
Construction Easement and
Agreement For St. Anthony
Parkway Bridge Over BNSF
Northtown Yard – Parcel 9**

WHEREAS, on December 9, 1999, the City Council adopted its Resolution No. 99R-426, “Adoption of 2000-2004 Capital Program and fixing the maximum amounts for 2000 to be expended by the various funds”;

WHEREAS, on December 9, 1999, the City Council adopted its Resolution No. 99R-427, “Request to issue and sell bonds for 2000 Capital Program”;

WHEREAS, on December 13, 2004, the City Council adopted its Resolution No. 2004-580, “Adoption of 2005-2010 Capital Program and fixing the maximum amounts for 2005 to be expended by the various funds”;

WHEREAS, on December 13, 2004, the City Council adopted its Resolution No. 2004R-582 and its Resolution No. 2004R-583, “Request to issue and sell bonds for 2005 Capital Program”;

WHEREAS, on May 5, 2007, the City Council authorized submission of an application for federal funds for the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFE TEA LU) for the St. Anthony Bridge Project with a recommendation to commit City funds should the project be selected per federal requirements;

WHEREAS, on April 24, 2009, the City Council authorized proper City Officers to submit the St. Anthony Bridge Project application for Member-Designated High Priority Project;

WHEREAS, on July 2, 2010, the City Council adopted its Resolution No. 2010R-331, “Authorizing execution of State Grant Agreement No. SG-2009-072 between Minneapolis and the Metropolitan Council”;

WHEREAS, on July 2, 2010, the City Council adopted its Resolution No. 2010R-333 and its Resolution No. 2010R-334, “Amending the 2010 Capital Improvement and PW-Transportation Capital Agency Appropriations by \$600,000 upon execution of State Grant Agreement No. SG-2009-072”;

WHEREAS, on March 7, 2013, the City Council authorized a request for proposal for engineering service;

WHEREAS, on July 19, 2013, the City Council authorized execution of a contract with Short Elliott Hendrickson, Inc. for design services and authorized signing the Memorandum of Agreement under Section 106 of the National Historic Preservation Act;

WHEREAS, on November 12, 2013, the City Council adopted a resolution authorizing acquisition through negotiations or condemnation of temporary construction easements and permanent easements across parcels therein for transportation related purposes;

WHEREAS, on February 25, 2014, the City Council adopted its Resolution No. 2014R-____ Project Designation, Bridge Type and Project Layout Approval, approving the project layout for construction of a new St. Anthony Parkway Bridge over the BNSF Northtown Yard;

WHEREAS, agents on behalf of the City have negotiated a proposed agreement with the Gust Kempf, Jr. Revocable Trust Under Agreement dated December 4, 2008 (Gust Kempf, Jr. Revocable Trust), fee owner of the real estate at 3236 California Street, N.E., which is described in Exhibit A attached hereto, under which the Gust Kemp, Jr. Revocable Trust will convey right of way containing approximately 23,747 square feet to the City for compensation in the amount

of \$120,000 and will grant the City a temporary easement containing 19,537 square feet for compensation in the amount of \$13,500, for the St. Anthony Parkway Bridge Project, for total compensation in the amount of \$133,500.00;

WHEREAS, the proposed settlement amount to be paid to the owner is consistent with the opinion of damages expressed by an independent real estate appraiser retained by the City, whose appraisal report was provided to the owner in the course of negotiations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

Upon approval of this proposed agreement and related documents by the City Attorney and outside counsel retained by the City and execution and delivery of the deed and easement on behalf of the Gust Kempf, Jr Revocable Trust, the City Contracting Officer is authorized to execute the easement and agreement on behalf of the City and to pay the Gust Kempf, Jr.Revocable Trust the amount described in the agreement.

EXHIBIT A

(Top 3 inches reserved for recording data)

WARRANTY DEED

Individual(s) to Business Entity

eCRV number: _____

DEED TAX DUE: \$ _____

DATE: _____, 2014

FOR VALUABLE CONSIDERATION, **Gust Kempf, Jr., as Trustee of the Gust Kempf, Jr. Revocable Trust under Agreement dated December 4, 2008, ("Grantor")**, hereby conveys and warrants to **City of Minneapolis, a municipal corporation** under the laws of **Minnesota, ("Grantee")**, real property in **Hennepin** County, Minnesota, legally described as follows:

All that part of Lot 1, Block 1, ACT ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying easterly and northeasterly of the following described line and its extensions:

Commencing at the northeast corner of said Lot 1; thence on an assumed bearing of South 89 degrees 43 minutes 13 seconds West along the most northerly line of said Lot 1, a distance of 110.00 feet to the point of beginning of the line to be described; thence South 00 degrees 16 minutes 47 seconds East a distance of 111 .20 feet; thence South 25 degrees 57 minutes 35 seconds East to the east line of said Lot 1, and there terminating.

Check here if all or part of the described real property is Registered (Torrens) ☒ as evidenced by Certificate of Title No. 1300852.

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:

Check applicable box:

- ☐ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- ☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

Gust Kempf, Jr., as Trustee of the Gust Kempf, Jr. Revocable Trust under Agreement dated December 4, 2008

Gust Kempf, Jr., Trustee

State of Minnesota, County of **Hennepin**

This instrument was acknowledged before me on _____, **2014**, by **Gust Kempf, Jr., as Trustee of the Gust Kempf, Jr. Revocable Trust under Agreement dated December 4, 2008.**

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____

(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
Kennedy & Graven, Chartered (RJL)
470 US Bank Plaza
200 So. 6th Street
Minneapolis, MN 55402
(612) 337-9300

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN
THIS INSTRUMENT SHOULD BE SENT TO:

City of Minneapolis
Public Works Department
Real Estate Section
350 S. Fifth St. #203
Minneapolis, MN 55415

TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

THIS INDENTURE, made this ____ day of _____, 2014, by and between Gust Kempf, Jr., as Trustee of the Gust Kempf, Jr. Revocable Trust Under Agreement dated December 4, 2008, Grantor, and the City of Minneapolis, a Minnesota municipal corporation, Grantee.

Recitals

1. **Legal Description of Property.** Grantor is the owner in fee simple of the real estate hereinafter described ("Property"):

Lot 1, Block 1, Act Addition.

Being registered land as evidenced by Certificate of Title No. 1300852

Containing 256,693 square feet (5.89 acres)

P.I.D. No. 03-029-24-41-0035

Property Address: 3236 California Street N.E., Minneapolis, MN 55418

2. **Grant of Temporary Easement.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor hereby bargains, sells and transfers unto Grantee, its successors and assigns, a temporary easement for construction purposes over, under, across and upon that part of the Property which is legally described as follows:

Commencing at the northeast corner of said Lot 1; thence on an assumed bearing of South 89 degrees 43 minutes 13 seconds West along the most northerly line of said Lot 1, a distance of 110.00 feet to the point of beginning of the easement to be described; thence South 00 degrees 16 minutes 47 seconds East a distance of 111.20 feet; thence South 25 degrees 57 minutes 35 seconds East to the east line of said Lot 1; thence southerly along said east line, a distance of 86.55 feet; thence North 89 degrees 30 minutes 44 seconds West a distance of 79.57 feet; thence North 38 degrees 56 minutes 22 seconds West a distance of 20.00 feet; thence North 00 degrees 16 minutes 47 seconds West a distance of 246.76 feet; thence South 89 degrees 43 minutes 13 seconds West a distance of 15.00 feet; thence North 00 degrees 16 minutes 47 seconds West a distance of 105.00 feet; thence South 89 degrees 43 minutes 13 seconds West a distance of 33.00 feet; thence North 00 degrees 16 minutes 47 seconds West to said most northerly line of Lot 1; thence easterly along said most northerly line to the point of beginning.

Containing 19,537 square feet (0.45 acres)

3. **Rights Within Temporary Easement.** Said temporary easement shall include, but not

be limited to, the right of the Grantee, its contractors, employees, agents and invitees to enter upon said easement tract, for the purpose of constructing roadway, utility and drainage improvements, and all purposes in furtherance thereof, or related thereto, including grading, sloping, excavating, restoring, depositing earthen materials, moving and storing equipment, supplies, and materials, and removing pavement, sidewalks, bushes, trees, undergrowth and other buildings, improvements and obstructions as, in the judgment of Grantee, may interfere with Grantee's construction of such roadway, utility and drainage improvements.

4. **Terms of Temporary Easements.** The term of the temporary easement granted herein shall commence on the effective date stated in a written notice from Grantee which is given at least 30 days prior to such effective date, and shall terminate twelve months following such effective date.

5. **Title.** Grantor covenants with Grantee that it is the owner of the Property in fee simple, that it has the sole right to grant said easement, and that any judgments or liens against parties with the same or similar names as Grantor are not against Grantor.

6. **Environmental Matters.** The Grantee shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and attorneys' fees, costs, disbursements, or losses resulting from any claims, actions, suits or proceedings relating to a release or threat of release of any hazardous substances, pollutants, or contaminants that may have existed on, or relate to the easement tract or the Property prior to the date of this instrument.

7. **Restoration of Property.** Prior to the expiration of the temporary easement term, Grantee shall restore the surface of the temporary easement tract in accordance with Grantee's restoration plan.

8. **Binding Effect.** The terms and conditions of this instrument shall run with the land and be binding on the Grantor and the personal representatives, heirs, devisees, successors and assigns of Grantor.

IN WITNESS WHEREOF, said Grantor has caused this instrument to be executed the day and year first above written.

GRANTOR:

Gust Kempf Jr., as Trustee of the Gust Kempf, Jr.
Revocable Trust Under Agreement dated
December 4, 2008

By: _____
Gust Kempf, Jr., Trustee

STATE OF MINNESOTA }
COUNTY OF } ss.

 This instrument was acknowledged before me on _____, 2014, by Gust Kempf, Jr., as Trustee of the Gust Kempf, Jr. Revocable Trust Under Agreement dated December 4, 2008, who is described in and executed the foregoing instrument; and that he signed his name thereto pursuant to the authority granted him under said trust agreement.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Kennedy & Graven, Chartered (RJL)
470 U.S. Bank Plaza
200South Sixth Street
Minneapolis, MN 55402
612-337-9300